

AMENDED IN ASSEMBLY MAY 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1191**

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**Introduced by Assembly Member Nazarian**

February 27, 2015

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An act to amend Section 66477 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 1191, as amended, Nazarian. Quimby Act: fees.

The Quimby Act, within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or to impose fees for park or recreational purposes as a condition of the approval of a tentative or parcel subdivision map, if specified requirements are met.

This bill would define the term “fee,” as used in the Quimby Act with regard to the expenditure of fees, to include any interest income generated from a fee charged and collected pursuant to that act. *The bill would provide that these provisions are declaratory of existing law.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 66477 of the Government Code is
- 2 amended to read:
- 3 66477. (a) The legislative body of a city or county may, by
- 4 ordinance, require the dedication of land or impose a requirement
- 5 of the payment of fees in lieu thereof, or a combination of both,

1 for park or recreational purposes as a condition to the approval of  
2 a tentative map or parcel map, if all of the following requirements  
3 are met:

4 (1) The ordinance has been in effect for a period of 30 days  
5 prior to the filing of the tentative map of the subdivision or parcel  
6 map.

7 (2) The ordinance includes definite standards for determining  
8 the proportion of a subdivision to be dedicated and the amount of  
9 any fee to be paid in lieu thereof. The amount of land dedicated  
10 or fees paid shall be based upon the residential density, which shall  
11 be determined on the basis of the approved or conditionally  
12 approved tentative map or parcel map and the average number of  
13 persons per household. There shall be a rebuttable presumption  
14 that the average number of persons per household by units in a  
15 structure is the same as that disclosed by the most recent available  
16 federal census or a census taken pursuant to Chapter 17  
17 (commencing with Section 40200) of Part 2 of Division 3 of Title  
18 4. However, the dedication of land, or the payment of fees, or both,  
19 shall not exceed the proportionate amount necessary to provide  
20 three acres of park area per 1,000 persons residing within a  
21 subdivision subject to this section, unless the amount of existing  
22 neighborhood and community park area, as calculated pursuant to  
23 this subdivision, exceeds that limit, in which case the legislative  
24 body may adopt the calculated amount as a higher standard not to  
25 exceed five acres per 1,000 persons residing within a subdivision  
26 subject to this section.

27 (A) The park area per 1,000 members of the population of the  
28 city, county, or local public agency shall be derived from the ratio  
29 that the amount of neighborhood and community park acreage  
30 bears to the total population of the city, county, or local public  
31 agency as shown in the most recent available federal census. The  
32 amount of neighborhood and community park acreage shall be the  
33 actual acreage of existing neighborhood and community parks of  
34 the city, county, or local public agency as shown on its records,  
35 plans, recreational element, maps, or reports as of the date of the  
36 most recent available federal census.

37 (B) For cities incorporated after the date of the most recent  
38 available federal census, the park area per 1,000 members of the  
39 population of the city shall be derived from the ratio that the  
40 amount of neighborhood and community park acreage shown on

1 the maps, records, or reports of the county in which the newly  
2 incorporated city is located bears to the total population of the new  
3 city as determined pursuant to Section 11005 of the Revenue and  
4 Taxation Code. In making any subsequent calculations pursuant  
5 to this section, the county in which the newly incorporated city is  
6 located shall not include the figures pertaining to the new city  
7 which were calculated pursuant to this paragraph. Fees shall be  
8 payable at the time of the recording of the final map or parcel map,  
9 or at a later time as may be prescribed by local ordinance.

10 (3) (A) The land, fees, or combination thereof are to be used  
11 only for the purpose of developing new or rehabilitating existing  
12 neighborhood or community park or recreational facilities to serve  
13 the subdivision, except as provided in subparagraph (B).

14 (B) Notwithstanding subparagraph (A), fees may be used for  
15 the purpose of developing new or rehabilitating existing park or  
16 recreational facilities in a neighborhood other than the  
17 neighborhood in which the subdivision for which fees were paid  
18 as a condition to the approval of a tentative map or parcel map is  
19 located, if all of the following requirements are met:

20 (i) The neighborhood in which the fees are to be expended has  
21 fewer than three acres of park area per 1,000 members of the  
22 neighborhood population.

23 (ii) The neighborhood in which the subdivision for which the  
24 fees were paid has a park area per 1,000 members of the  
25 neighborhood population ratio that meets or exceeds the ratio  
26 calculated pursuant to subparagraph (A) of paragraph (2), but in  
27 no event is less than three acres per 1,000 persons.

28 (iii) The legislative body holds a public hearing before using  
29 the fees pursuant to this subparagraph.

30 (iv) The legislative body makes a finding supported by  
31 substantial evidence that it is reasonably foreseeable that future  
32 inhabitants of the subdivision for which the fee is imposed will  
33 use the proposed park and recreational facilities in the  
34 neighborhood where the fees are used.

35 (v) The fees are used within a specified radius that complies  
36 with the city's or county's ordinance adopted pursuant to  
37 subdivision (a), and are consistent with the adopted general plan  
38 or specific plan of the city or county. For purposes of this clause,  
39 "specified radius" includes a planning area, zone of influence, or

1 other geographic region designated by the city or county, that  
2 otherwise meets the requirements of this section.

3 (4) The legislative body has adopted a general plan or specific  
4 plan containing policies and standards for parks and recreational  
5 facilities, and the park and recreational facilities are in accordance  
6 with definite principles and standards.

7 (5) The amount and location of land to be dedicated or the fees  
8 to be paid shall bear a reasonable relationship to the use of the  
9 park and recreational facilities by the future inhabitants of the  
10 subdivision.

11 (6) (A) The city, county, or other local public agency to which  
12 the land or fees are conveyed or paid shall develop a schedule  
13 specifying how, when, and where it will use the land or fees, or  
14 both, to develop park or recreational facilities to serve the residents  
15 of the subdivision. Any fees collected under the ordinance shall  
16 be committed within five years after the payment of the fees or  
17 the issuance of building permits on one-half of the lots created by  
18 the subdivision, whichever occurs later. If the fees are not  
19 committed, they, without any deductions, shall be distributed and  
20 paid to the then record owners of the subdivision in the same  
21 proportion that the size of their lot bears to the total area of all lots  
22 within the subdivision.

23 (B) The city, county, or other local agency to which the land or  
24 fees are conveyed or paid may enter into a joint or shared use  
25 agreement with one or more other public districts in the  
26 jurisdiction, including, but not limited to, a school district or  
27 community college district, in order to provide access to park or  
28 recreational facilities to residents of subdivisions with fewer than  
29 three acres of park area per 1,000 members of the population.

30 (7) Only the payment of fees may be required in subdivisions  
31 containing 50 parcels or less, except that when a condominium  
32 project, stock cooperative, or community apartment project, as  
33 those terms are defined in Sections 4105, 4125, and 4190 of the  
34 Civil Code, exceeds 50 dwelling units, dedication of land may be  
35 required notwithstanding that the number of parcels may be less  
36 than 50.

37 (8) Subdivisions containing less than five parcels and not used  
38 for residential purposes shall be exempted from the requirements  
39 of this section. However, in that event, a condition may be placed  
40 on the approval of a parcel map that if a building permit is

1 requested for construction of a residential structure or structures  
2 on one or more of the parcels within four years, the fee may be  
3 required to be paid by the owner of each parcel as a condition of  
4 the issuance of the permit.

5 (9) If the subdivider provides park and recreational  
6 improvements to the dedicated land, the value of the improvements  
7 together with any equipment located thereon shall be a credit  
8 against the payment of fees or dedication of land required by the  
9 ordinance.

10 (b) Land or fees required under this section shall be conveyed  
11 or paid directly to the local public agency which provides park  
12 and recreational services on a communitywide level and to the  
13 area within which the proposed development will be located, if  
14 that agency elects to accept the land or fee. The local agency  
15 accepting the land or funds shall develop the land or use the funds  
16 in the manner provided in this section.

17 (c) If park and recreational services and facilities are provided  
18 by a public agency other than a city or county, the amount and  
19 location of land to be dedicated or fees to be paid shall, subject to  
20 paragraph (2) of subdivision (a), be jointly determined by the city  
21 or county having jurisdiction and that other public agency.

22 (d) This section does not apply to commercial or industrial  
23 subdivisions or to condominium projects or stock cooperatives  
24 that consist of the subdivision of airspace in an existing apartment  
25 building that is more than five years old when no new dwelling  
26 units are added.

27 (e) Common interest developments, as defined in Section 4100  
28 of the Civil Code, shall be eligible to receive a credit, as determined  
29 by the legislative body, against the amount of land required to be  
30 dedicated, or the amount of the fee imposed, pursuant to this  
31 section, for the value of private open space within the development  
32 which is usable for active recreational uses.

33 (f) Park and recreation purposes shall include land and facilities  
34 for the activity of "recreational community gardening," which  
35 activity consists of the cultivation by persons other than, or in  
36 addition to, the owner of the land, of plant material not for sale.

37 (g) As used in this section with regard to the expenditure of  
38 fees, the term "fee" includes any interest income generated from  
39 a fee charged and collected pursuant to this section.

1 (h) This section shall be known, and may be cited, as the  
2 Quimby Act.

3 *SEC. 2. The amendment of Section 66477 of the Government*  
4 *Code made by this act does not constitute a change in, but is*  
5 *declaratory of, existing law. The Legislature further finds and*  
6 *declares that any locally adopted ordinance or regulation that is*  
7 *consistent with the amendment of Section 66477 of the Government*  
8 *Code made by this act is valid.*

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